

## **Enclosure B**

### **Special Conditions**

#### **I. Basis for Requiring and Nature of Special Conditions**

Pursuant to 34 CFR §80.12, the Office of Special Education Programs (OSEP) is imposing Special Conditions on New Mexico's Federal Fiscal Year (FFY) 2005 grant award under Part C of the Individuals with Disabilities Education Act (Part C), related to two areas of longstanding noncompliance that the State has failed to correct.

- a. Conducting evaluations and assessments and convening the initial Individualized Family Service Plan (IFSP) meeting within 45 days of referral, as required by 34 CFR §§303.321(e), 303.322(e) and 303.342(a) (45-day timeline); and
- b. Providing early intervention services listed on the child's IFSP as required by 34 CFR §303.342(e) (service provision).<sup>1</sup>

#### **A. Conducting Evaluations and Assessments and Initial IFSP Meetings within 45 days of Referral**

##### **1. Basis for Requiring Special Conditions**

OSEP's 2000 monitoring report identified noncompliance with Part C's 45-day timeline requirements at 34 CFR §§303.321(e)(2), 303.322(e)(1) and 303.342(a) that evaluations, assessments and an initial meeting to develop the IFSP are completed within 45 days of referral. OSEP's June 29, 2001 letter accepted the State's Improvement Plan and required the State to submit a final progress report by December 31, 2002.

On page 22 of the FFY 2002 APR, the State reported data for each year from 2000 – 2003 that indicated the percentages of initial IFSPs developed within the State's required 45-day timeline were 41 percent, 52 percent, 55 percent and 54 percent respectively.<sup>3</sup> On page 28 of the FFY 2003 APR, the State updated that data by indicating that, in FY 2004, 55 percent of initial IFSPs were developed within the State's required 45-day timeline. In the FFY 2003 APR, on page 29, Table 15, the State also reported data broken down by providers, indicating that 27 out of 29 providers had less than full compliance with the 45-day timeline. The State acknowledged in its FFY 2003 APR that it appears that several reasons for the delays in meeting the timeline are related to completing evaluations.

##### **2. Nature of Special Conditions**

In the first Progress Report, due on October 28, 2005, the State must provide:

- a. Statewide aggregate data (already being collected by the State) for July, August and September 2005 showing:

---

<sup>1</sup> In its letter regarding the State's FFY 2003 APR, OSEP will respond to the other three noncompliance issues (including the previously identified issues regarding service coordination and the 90-day transition conference, and the issue regarding the State's ability to correct State-identified noncompliance that OSEP identified in its February and December, 2004, letters).

<sup>2</sup> In its letter regarding the State's FFY 2003 APR, OSEP will respond to the other three noncompliance issues (including the previously identified issues regarding service coordination and the 90-day transition conference, and the issue regarding the State's ability to correct State-identified noncompliance that OSEP identified in its February and December, 2004, letters).

<sup>3</sup> Although Part C requires that an initial meeting to develop the IFSP be held within 45 days, it is our understanding that New Mexico requires that the initial IFSP be developed at the initial IFSP meeting. While New Mexico is not required to maintain this higher standard, its data indicate noncompliance with Part C's 45-day timeline requirement.

- (i) the number and percentage of infants and toddlers for whom evaluations and assessments were completed: (a) within 45 days from referral, and (b) longer than 45 days from referral, and for this number, disaggregating by number any children for which the State has documented explanations due to family circumstances outside the lead agency's control, and
- (ii) the number and percentage of infants and toddlers for whom evaluations, assessments, and initial IFSP meetings were conducted: (a) within 45 days from referral, and (b) longer than 45 days from referral, and for this number, disaggregating by number any children for which the State has documented explanations due to family circumstances outside the lead agency's control; and
- b. Updated monitoring data and information regarding the 27 out of 29 providers listed in Table 15 on page 29 of the State's FFY 2003 APR that had less than full compliance with the 45-day timeline, including the State's analysis of the causes for those delays, the specific corrective actions the State has required (including the evidence of change or correction data required by the State) to ensure that it is corrected as soon as possible, but no later than April 1, 2006 and the status of correction.

In the second Progress Report, due on April 14, 2006, the State must provide:

- a. Updated data on the 45-day timeline requirement under 1 above for October 1, 2005, through March 30, 2006; and
- b. Updated monitoring data and information on the 45-day timeline requirement under item 2 above for the period October 1, 2005 through March 30, 2006.

## B. Provision of Early Intervention Services

### 1. Basis for Requiring Special Conditions

OSEP's 2000 monitoring report identified noncompliance because the State had not ensured that the early intervention services listed on the IFSP were provided (34 CFR §303.344(d)). OSEP's June 29, 2001 letter accepted the State's Improvement Plan and required the State to submit a final progress report by December 31, 2002. The State's February 18, 2003 report proposed to "conduct an analysis that compares services delivered to services listed on IFSPs."

The State's October 2003 report, FFY 2002 APR, and FFY 2003 APR all indicate continued noncompliance. Page 33 of the State's FFY 2003 APR, Table 17, lists the percent of services provided in accordance with IFSPs for eight provider agencies where follow-up on-site visits had occurred, and indicates that none of the eight providers were in full compliance with this requirement.<sup>4</sup>

### 2. Nature of the Special Conditions

In the first, progress report, due on October 28, 2005, the State must provide updated monitoring data and information regarding the 8 providers listed in Table 17 on page 33 of the State's FFY 2003 APR that had less than full compliance with the requirement to ensure that the early intervention services listed on the IFSPs were

<sup>4</sup> The FFY 2003 APR listed the following data regarding the percentage of services provided in accordance with the IFSP: (1) Casa Alegre – 62% in FY 2003 and 73% in FY 2004; (2) Mescalero – 10% in FY 2003 and 80% in FY 2004; (3) NAPP – 15% in FY 2003 and 63% in FY 2004; (4) PB&J – n/a in FY 2003 and 86% in FY 2004; (5) PMS-Roundtree – 70% in FY 2003 and 80% in FY 2004; (6) RCI – 33% in FY 2003 and 70% in FY 2004; (7) Tobosa – 80% in FY 2003 and 18% in FY 2004; and (8) Zia – 80% in FY 2003 and 95% in FY 2004.

provided, including the State's analysis of the causes for the noncompliance, the specific corrective actions the State has required (including the evidence of change or correction data required by the State) to ensure that it is corrected as soon as possible, but no later than April 1, 2006 and the status of correction.

In the second progress report, due on April 14, 2006, NMDOH must provide updated monitoring data and information, for the period October 1, 2005 through March 30, 2006, regarding the 8 providers listed in Table 17 on page 33 of the State's FFY 2003 APR that had less than full compliance with the requirement to ensure that the early intervention services listed on the IFSPs were provided.

## II. Evidence Necessary for Conditions to Be Removed

The Department will remove the special conditions if, at any time prior to the expiration of the grant year, New Mexico provides documentation, satisfactory to the Department, that it has fully met the requirements and conditions set forth above, which require New Mexico to submit data demonstrating compliance with each of the two areas of noncompliance that are the subject of the special conditions under Part C.

## III. Method of Requesting Reconsideration

The State can write to Troy R. Justesen, Acting Director, Office Of Special Education Programs, if it wishes the Department to reconsider any aspect of these Special Conditions. The request must describe in detail the changes to the Special Conditions sought by the State and the reasons for those requested changes.

## IV. Submission of Reports

All reports that are required to be submitted by New Mexico to the Department under the Special Conditions should be submitted to:

U.S. Department of Education  
Office of Special Education and Rehabilitative Services  
Attn: Ginger Johnson  
400 Maryland Ave, SW  
Washington, DC 20202-2550